

ATTACHMENT 8

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

In re: CATHODE RAY TUBE (CRT) ANTITRUST
LITIGATION

This Document Relates to:

Sharp Electronics Corp., et al. v. Hitachi Ltd., et al.,
Case No. 13-cv-1173 SC

Case No. 07-cv-5944 SC

MDL No. 1917

**SHARP ELECTRONICS
CORPORATION AND SHARP
ELECTRONICS
MANUFACTURING COMPANY OF
AMERICA, INC.'S MOTION FOR
LEAVE TO FILE RESPONSE TO
THE TOSHIBA DEFENDANTS'
SUPPLEMENTAL REPLY BRIEF**

NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that Plaintiffs Sharp Electronics Corporation and Sharp Electronics Manufacturing Company of America, Inc. (collectively, “Sharp”) hereby move the Court for an order granting Sharp leave to file a response to the Toshiba Defendants’ Supplemental Reply in Support of Their Amended Motion to Dismiss Sharp’s Complaint (Dkt. No. 2336).

This motion is based upon this Notice of Motion and Motion, the Memorandum of Points and Authorities in support thereof, and such other materials and information that the Court may properly consider.

MEMORANDUM OF POINTS AND AUTHORITIES

Sharp, by and through undersigned counsel, hereby respectfully submits this Memorandum in Support of Sharp's Motion for Leave to File a Response to the Toshiba Defendants' Supplemental Reply in Support of the Toshiba Defendants' Amended Motion to Dismiss Sharp's Complaint. Sharp seeks leave as required under Civil Local Rule 7-3(d) to file a short response to the Toshiba Defendants' Supplemental Reply, which purports to bring "new factual evidence" to this Court's attention in ruling on the Toshiba Defendants' Amended Motion to Dismiss Sharp's Complaint. Sharp's proposed response is attached hereto as Exhibit A.

Good cause exists to permit Sharp an opportunity to respond to the Toshiba Defendants' supplemental briefing. On January 13, 2014, the Toshiba Defendants filed a motion for leave to file a supplemental reply, purporting to bring to the Court's attention "new evidence" served by Sharp in discovery, on December 20, 2013, after briefing for the Toshiba Defendants' motion to dismiss had closed. (Dkt. No. 2322). As Sharp explains more fully in its proposed response to the Toshiba Defendants' supplemental reply, nothing in Sharp's December 20, 2013 discovery responses was new and had not already been known to the Toshiba Defendants as a result of previous discovery responses served by Sharp in July 2013 or from Sharp's allegations in its complaint. The Toshiba Defendants' new supplemental reply brief thus was untimely. In addition, the Toshiba Defendants' supplemental reply argues nothing that changes the fundamental defects in the Toshiba Defendants' motion to dismiss.

On January 17, 2014, before Sharp could file a brief opposing the Toshiba Defendants' motion for leave, the Court granted the Toshiba Defendants' leave to file their supplemental reply. (Dkt. No. 2331). Sharp therefore respectfully asks the Court for leave to file a short response to the Toshiba Defendants' supplemental reply, to correct the Toshiba Defendants' mischaracterization of the discovery record and show why the supplemental reply brief has no effect on the Toshiba Defendants' motion to dismiss.

The Toshiba Defendants will not be prejudiced should the Court grant Sharp's Motion for Leave to File. Sharp's proposed response to the Toshiba Defendants' supplemental reply brief addresses only those facts and arguments contained in the Toshiba Defendants'

1 supplemental reply. There is no unfair surprise to the Toshiba Defendants, since Sharp's
2 proposed brief is responding only to issues initially raised by the Toshiba Defendants. The
3 Toshiba Defendants chose to file a supplemental brief addressing issues already known to them at
4 the time of prior briefing, and Sharp should fairly be given the opportunity to address the Toshiba
5 Defendants' latest arguments.

6 For these reasons, this Court should grant Sharp's Motion for Leave to File a
7 Response to the Toshiba Defendants' Supplemental Reply.

8
9 DATED: January 24, 2014

By: /s/ Craig A. Benson

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EXHIBIT A

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**SHARP ELECTRONICS
CORPORATION AND SHARP
ELECTRONICS
MANUFACTURING COMPANY OF
AMERICA, INC.'S RESPONSE TO
THE TOSHIBA DEFENDANTS'
SUPPLEMENTAL REPLY IN
SUPPORT OF THEIR AMENDED
MOTION TO DISMISS SHARP'S
COMPLAINT**

MEMORANDUM OF POINTS AND AUTHORITIES

The Toshiba Defendants' latest supplemental reply brief should be afforded no weight. This is now the *fourth* brief the Toshiba Defendants have filed in support of their baseless motion to dismiss Sharp's complaint,¹ and nothing in it changes that the motion should be denied.

As a threshold matter, the "new factual evidence" the Toshiba Defendants present is in fact nothing new. Sharp's December 20, 2013 discovery responses state nothing about Sharp Corporation that was not already known from previous discovery responses and Sharp's own allegations. Three months before the Toshiba Defendants filed their motion to dismiss, on July 22, 2013, Sharp served on them discovery responses stating that plaintiff "Sharp Electronics Corporation purchased CRT Products in the U.S. and for the U.S. from . . . Sharp Corporation" Sharp also filed these specific portions of their discovery responses as an exhibit to Sharp's opposition brief to the Toshiba Defendants' motion, on November 6, 2013. (Dkt. No. 2195-4, Declaration of Craig A. Benson, Exh. A at 6) (filed under seal).

In any event, even if the Toshiba Defendants' latest argument were timely, it is irrelevant. Nothing the Toshiba Defendants argue changes the facts that Sharp enumerated in its initial opposition brief or speaks to the fundamental defect in the Toshiba Defendants' motion. Sharp Corporation is not a party to this lawsuit. (Dkt. No. 2195 ("Opp.") at 1, 3-4). The two U.S.-based Sharp plaintiffs in this litigation are not parties to the BTA on which the Toshiba Defendants rely. (Opp. at 1, 4). Sharp does not allege claims in this lawsuit based on any purchases by Sharp Corporation or on any transactions at all between Sharp Corporation and Toshiba Corporation. (Opp. at 1-4). The Toshiba Defendants do not argue anything to contradict these basic facts.

The Toshiba Defendants' latest reply asserts that portions of Sharp's claims here are based on purchases through inter-company transactions of CRT Products from Sharp

¹ "Sharp" refers to plaintiffs Sharp Electronics Corporation and Sharp Electronics Manufacturing Company of America, Inc. The "Toshiba Defendants" are defendants Toshiba Corporation, Toshiba America, Inc., Toshiba America Information Systems, Inc., and Toshiba America Electronic Components, Inc.

1 Corporation. Notably, the Toshiba Defendants do not and cannot argue that these inter-company
2 transactions have anything to do with any purchases from Toshiba Corporation, much less that
3 inter-company transactions between Sharp and Sharp Corporation should somehow be controlled
4 by a BTA between Sharp Corporation and Toshiba Corporation. They merely argue again –
5 without citing authority – that the BTA should be enforced against Sharp because of the “close
6 relationship” between Sharp and Sharp Corporation. But the fact that Sharp Corporation is the
7 ultimate parent of the Sharp plaintiffs in this case is hardly new news, and, as prior briefing has
8 made clear, is insufficient to bind the Sharp plaintiffs to their parent’s contract. (Opp. at 5-12).
9 For the reasons already discussed in Sharp’s opposition brief, Sharp is not bound by the BTA,
10 Sharp’s claims do not relate to the BTA, and enforcing the BTA against Sharp would violate
11 public policy. The Toshiba Defendants’ motion should be denied.

12
13 DATED: January 24, 2014

By: /s/ Craig A. Benson

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